

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 21316 of 2014

(Arising out of **Order-in-Appeal** No.04/2013-VCH dated 20.03.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

**M/s Hindustan Petroleum
Corporation Ltd.,**

Visakh LPG Plant,
Malakapuram Post,
Visakhapatnam,
Andhra Pradesh – 530 011.

..

APPELLANT

VERSUS

**Commissioner of Customs
Visakhapatnam - Customs**

4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

..

RESPONDENT

APPEARANCE:

Shri Akhilesh Kangsia & Ms Aporva Parihar, Advocates for the Appellant.
Shri B. Subhas Chandra Bose, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30507/2025

Date of Hearing: 30.07.2025

Date of Decision: 21.11.2025

[ORDER PER: A.K. JYOTISHI]

M/s Hindustan Petroleum Corporation Ltd., (hereinafter referred to as appellant) are in appeal against the order of the Commissioner (Appeals), whereby, he has upheld the order passed by the original Adjudicating Authority.

2. The issue, in brief, is that the appellant had filed two into bond Bill of Entries for bonding 1959.840 MT of "Liquified Petroleum Gas – Butane", which was provisionally assessed. The items was classified under CTH 2711 1300 and duty was charged @ 10% BCD+16%CVD+2% Excise Education Cess and 2% Customs Education Cess amounting to total duty of Rs. 1,19,62,219/-, which

was also paid by the appellant. However, subsequently, the appellant filed a Refund claim seeking the refund of the said amount on the grounds that their imported goods are classifiable under heading CTH 2711 1900 as "others" and therefore, eligible for benefit of Sl. No. 75(E) of Customs Notification No. 21/2002 and Sl. No. 10 of Central Excise Notification No. 4/2005. It was also argued by them that the item imported is not but Commercial Butane classifiable under CTH 2711 1300 as Butane and is also therefore eligible for the same benefit as this is also being put to use as LPG and supplied for domestic distribution.

3. Adjudicating Authority, after going through various submissions, as well as the provisions of the Interpretative Rules 3(b), inter alia, held that the imported items is a mixture of Butane and Propane, where the Butane is up to 98% and therefore, it was canvassed under 2711.13. In so far as benefit under notification was concerned, he held that the said Customs Notification No. 37/2005 and Central Excise Notification No. 18/2005, prescribed for NIL rate of duty to Liquified Propane, Liquefied butane, Liquefied Propane + butane, Liquefied Petroleum Gas (LPG) for distribution to household domestic consumers. These notifications were issued on 02.05.2005, whereas the goods were imported on 21.04.2005 and cleared for home consumption on 25.04.2005 and therefore, these notifications were not available for the goods in question at the time of clearance. Therefore, the classification of the imported goods under CTH 2711 1300 denying the benefit under Customs Notification No. 21/2002, Sl. No. 75(E) read with Central Excise Notification No. 4/2005 Sl. No. 10 was ordered.

4. On appeal, the Commissioner (Appeals) examined the proposition of the appellant that the import cannot take place in the form of LPG and it has to be in the form of Butane or Propane only and has to be sold without undertaking

any processing in Indian market, as LPG and therefore, correct classification should have been 2711.19 and not 2711.13. The appellant also relied on the Notification No. 37/2005-Cus and Notification No. 18/2005, both 02.05.2005 to support their submissions that the intention of the Government was to bring the imported duty burden to NIL to oil industry, who import Butane and Propane, which is sold to house hold and domestic consumers as LPG. It was also argued that since the term "Liquified Propane Gas (LPG)" has not been defined in Central Excise Tariff Act, the same has to be understood in popular sense as LPG as Butane & Propane in terms Butane and Propane and are understood as one and the same and therefore the benefit of NIL rate of duty, should be made available to both Butane and Propane.

4. The Learned Advocate for the appellant is basically contesting that the classification has not been done properly and the benefit of NIL rate of duty has not been extended by treating the imported goods as Butane and not as LPG. The Government had exempted LPG following under CTH 2711 1900 vide Notification No. 21/2002 and the only amendment made in the said entry was to include "liquefied petroleum and butane mixture, liquefied propane, liquefied butane in addition to LPG". Similarly, when Central Excise exemption Notification NO. 4/2005 was also modified to include "liquified petroleum and butane mixture, liquified propane, liquified butane and liquified petroleum gases". In support that the imported goods are nothing but LPG and classifiable under heading 2711 1900, he relies on the Indian Standards issued by the Indian Standards, which prescribes standards for LPG under IS 4576, wherein it has been provided that there are 3 types of LPG based on their pre-constitute namely commercial butane, commercial propane and mixture of commercial butane and commercial propane. The appellant also relies on the judgment of the Co-ordinate Bench in the case of other importers, where the similar goods have been classifiable under heading 2711 1900. He is relying on

the judgment of Tribunal in the case Cochin Refineries Ltd., Vs Commissioner of Central Excise, Cochin [2001 (132) ELT 619 (Tri-Bang)] and Commissioner of Customs (Import), Mumbai Vs Aegis Logistics Ltd., [2014 (308) ELT 135 (Tri-Mum)], in support that commercial butane and LPG in accordance with the IS standards are classifiable under heading 2711.19. His another alternative argument is that the amendment to the Notification 27/2002-Customs vide Notification No. 37/2005-Customs is an amendment by way of substitution and therefore, it is retrospective in nature. In this regard, he is relying on the judgment of The Hassan Co-operative Milk Producers Societies Union Ltd., Vs State of Karnataka [AIR 2014 Kant 120], wherein, it was held that an amendment by way of substitution, has retrospective operation. Similar view was taken by the Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise Vs Fosroc Chemicals [2015 (318) ELT 240 (Kar) and Ciftech Solutions Vs State of Karnataka [2015 (83) Kar J.L. 270 (HC)]. He has also relied on the judgment of Hon'ble Supreme Court in the case of CIT Vs Vatika Township [2015 (1) SCC 1] and Government of India Vs Indian Tobacco Association [2005 (187) ELT 162 (SC)], Government of Kerala Vs Mother Superior Adoration Convent [2021 (376) ELT 242 (SC)]. He has further argued that when the goods are covered by description, the entry should be interpreted to cover the product as held by Hon'ble Supreme Court in the case of Jain Engineer Co. Vs Commissioner of Customs [1987 (32) ELT 3 (SC)].

5. Learned AR submits that it is not in dispute that the Butane component of the imported good was predominant and therefore, it has been rightly classified as Butane under heading 2711 1300. However, in so far as the exemption notification is concerned, it has been denied rightly on the grounds that for the goods cleared on 25.04.2005 vide Ex-bond BoE 00983, there was no exemption available for Butane on said date and the only exemption available was for LPG. Therefore, their construction of the notification and

especially when there is no such provision for giving retrospective effect to the amendment notification would mean that only LPG was exempted and not Butane prior to 02.05.2005. He, further submits that the matter is no longer res-integra in view of the decisions of two Co-ordinate Benches, whereby, in the appeals filed by the same company i.e. HPCL, has been dismissed on the very same issue. He is relaying on the judgment in the case of Hindustan Petroleum Corporation Ltd., Vs Commissioner of Central Excise, Pune-I vide Final Order No. A/85651/2020 dated 12.06.2020 [2020 (9) TMI 561 – CESTAT, Mumbai], wherein, inter alia, it was held that for the period prior to 02.05.2005, the notification did not contain all the three chapter sub-headings like Entry No. 75E of Notification No. 37/ 2005-Customs dated 02.05.2005 and therefore, relying on the judgment of Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs M/s Dilip Kumar & Company & Others [2018 (7) TMI 1826-SC], it was held that said goods cannot be eligible for exemption as LPG. Similarly, in Hindustan Petroleum Corporation Ltd., Vs Commissioner of Customs, Kolkata vide Final Order No. A/77116/2018 dated 18.12.2018 [2019 (4) TMI 1277 – CESTAT, Kolkata], similar issue was examined and, inter alia, held that the wordings of the Notification No. 37/2005 dated 02.05.2005 does not give any clue or indication to the effect that substitution of entry is to be retrospective and therefore, the benefit under amendment notification would be available only with effect from 02.05.2005.

6. Heard both the sides and perused the records.

7. We find that the short issue for consideration is whether the product is classifiable as "LPG" falling under heading 2711 1900 or as "Propane and Butane" mixture under heading 2711 1300. We find that in the given factual matrix, it is indeed a mixture of Propane and Butane, where the Butane is

predominant and constitute up to 98%. We also note that the product has been described on the Bill of Entry, as well as relevant documents as "LPG-butane". The argument by the appellant that LPG as such cannot be imported and it is only in the nature of Butane or Propane or as a mixture thereof, it can be imported and sold as LPG. This would not help their cause in as much as the Government has subsequently exempted not only LPG, but also liquified propane and butane mixture, liquefied propane and liquefied butane, if this argument is taken, there was no need to make any amendment. It is also obvious that these items fall under different sub-headings, as compared to LPG imported for supply to household domestic consumers. We find ourselves in agreement with the findings by the Co-ordinate Bench in their own case and denial of the benefit of notification for the period prior to 02.05.2005, relying on the judgment of Dilip Kumar & Company, supra. In this case, even it is presumed that these items could be used interchangeably, however, in terms of expression, used in notification the fact remains that the benefit of ambiguity has to go to Revenue. Accordingly, respectfully following the judgments of the Tribunals in the appellant's own case cited, supra, we do not find any merit in the appeal of the appellant and therefore, we do not find any infirmity in the impugned order.

8. Appeal dismissed.

(Pronounced in the open court on 21.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)